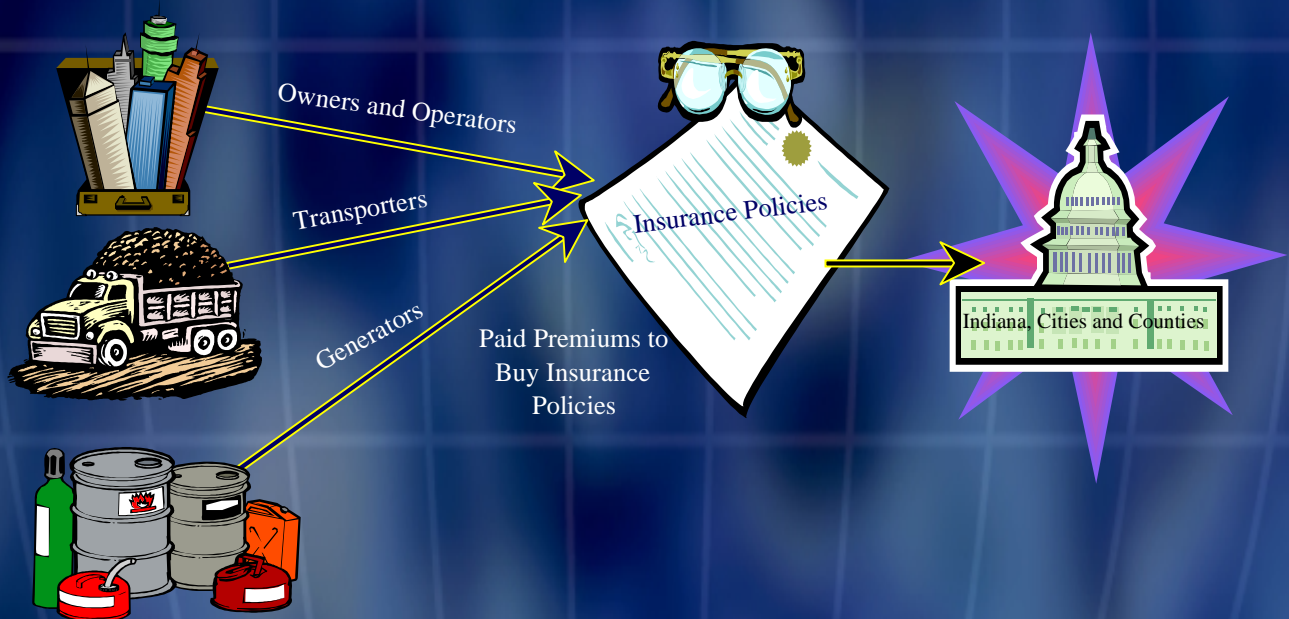


INDIANA BROWNFIELDS CONFERENCE

FUND BROWNFIELDS REMEDIATION BY USING THE HISTORICAL INSURANCE POLICIES BOUGHT BY COMPANIES

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Matthew W. Cockrell, Esq.
Zevnik Horton Guibord
McGovern Palmer & Fognani
77 West Wacker Drive, 33rd Floor
Chicago, Illinois 60601

Telephone: 312.977.2540
Facsimile: 312.977.2560
E-Mail: mcockrell@zevnik.com

Question:

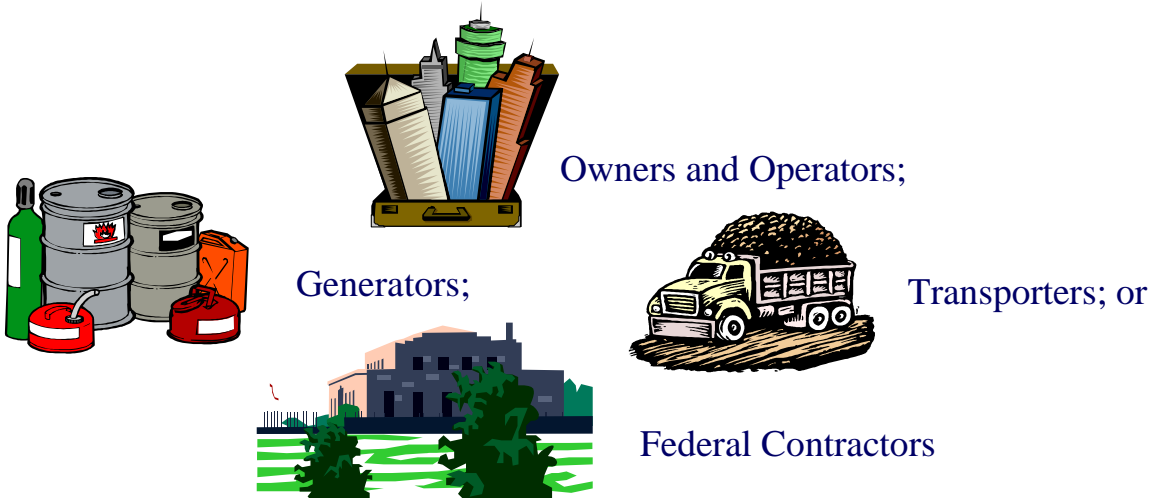
Who Bought Insurance Since the Early 1900's
Which Can Be Used to Fund Remediation of Brownfields?

Answer:

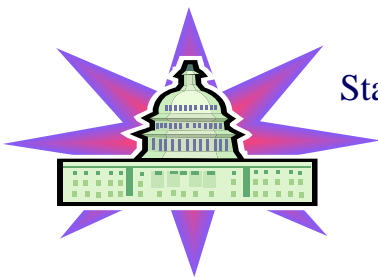
Almost Everyone

. . . State and local governments and private developers can obtain millions of dollars to clean up polluted or brownfield sites from the insurance policies of the parties who caused the environmental damage . . .

The insurance policies bought by all past:



can also be successfully used to fund Brownfields by:



State and Local Governments and Private Developers

to fund environmental remediation.

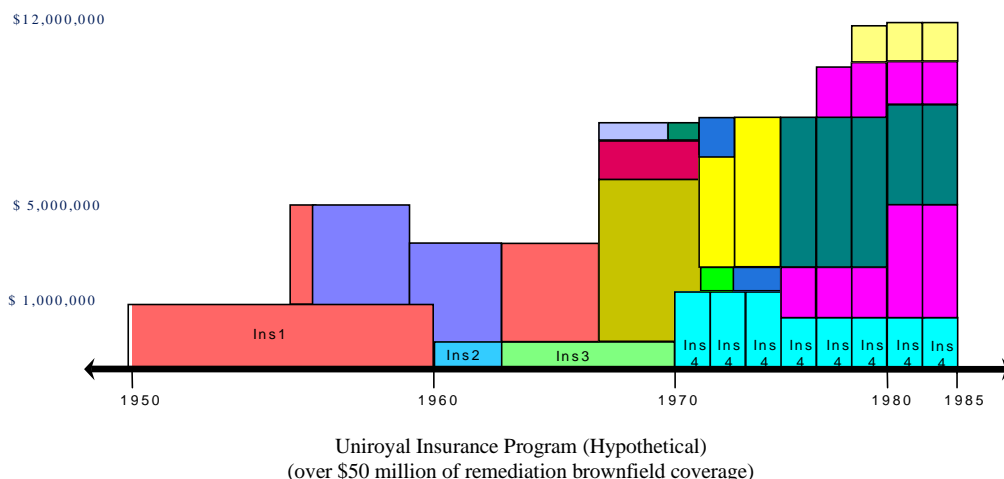
***Summary Explanation of CGL Insurance Coverage For
Environmental Property Damage ¹
- Strategy to Recover Environmental Clean Up Costs -***

Almost every owner and operator that caused or contributed to environmental property damage (the “PRPs” from the turn of the century to the present paid premiums to buy Comprehensive General Liability (“CGL”) policies from currently solvent insurers. These CGL policies were intentionally named “comprehensive” and “general” because they were drafted to provide broad virtually unlimited coverage unless exclusions applied. In all but a few jurisdictions (not relevant here), these CGL policies have been consistently found to pay for environmental property damage.

With the passage of various federal and state environmental laws in the late 1960s and early 1970s, companies began to be sued for causing environmental property damage. These companies, in turn, notified their insurance companies and demanded that they pay the costs of defending them and pay settlements or judgments. The insurance industry refused to pay these claims, citing numerous policy terms, conditions, definitions and exclusions. As a result, it was left to the courts to determine whether these CGL policies covered these environmental liabilities and, if so, under what circumstances.

Hypothetical Mishawaka
Brownfield's Insurance Recovery Strategy

The Uniroyal site consists of 56 buildings on 43 acres. It has been owned by Uniroyal - in Bankruptcy - since at least the 1940's. The estimated project cost are estimated to be \$10 million.



¹ This is intended only to provide the reader with an overall understanding of the applicability of CGL insurance policies to cover the reader's environmental liabilities. These are not admissions of Zevnik Horton Guibord McGovern Palmer & Fognani or its client's.

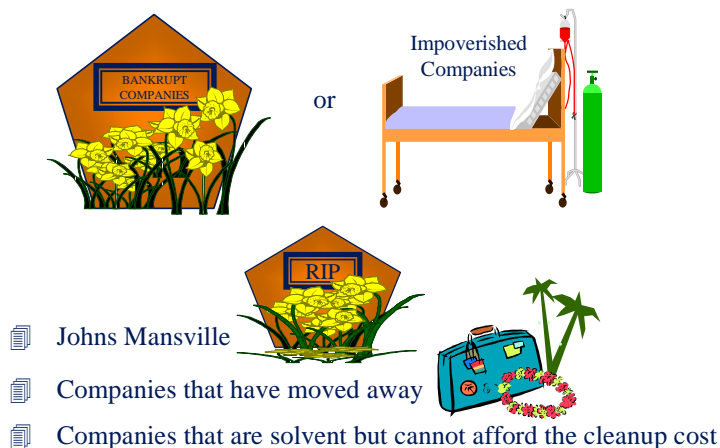
The CGL policies are known as “long tail” policies in that policies in effect long ago pay for property damage taking place at that distant time. The policies which apply to cover a loss for environmental property damage are those in effect when the property damage took place. Almost always, property damage took place beginning decades ago when the sites began operations and continues to today. *Thus, many decades of CGL policies may be available for these remedial costs.* Importantly, all such policies cover the property damage even after the contractor ceased operations at the facility.

At most properties, multiple owners and operators used the site (a) sequentially over time and (b) concurrently at the same time. These owners and operators bought CGL policies for each year they performed work at the facility. Every single one of those policies apply to the loss. Accordingly, the greater the number of owners and operators at the site, the greater the number of *insurance programs* responsible for the site remediation.

Each owner and operators insurance program consists of multiple insurance companies and policies. For each year, the owner and operators bought “primary” CGL insurance to cover initial or smaller losses and then “umbrella” and “excess” policies to cover larger losses, often reaching in excess of \$10 million *per year*. To calculate the gross amount of coverage available to each policyholder and the government, one multiplies the number of years of applicable policies times the policy limits. In the simplest example, if an owner or operator began operations in 1940 and that is when property damage began (a realistic scenario) and bought \$1 million of policy limits each year, there is \$600 million of limits available. For sites with more than one owner or operator, this number is multiplied accordingly.

Of course, the insurance companies have disputed that their policies insured environmental property damage. As a result, the vast majority of the Fortune 1000 companies were forced to sue their insurers for coverage for sites. As a result of this litigation, a number of things happened. *First*, the state supreme courts’ almost universally held that the CGL insurance policies covered these losses. *Second*, the insurance companies paid billions of dollars for these remedial costs. *Third*, the state courts issued rulings defining the criteria by which these policies are held responsible. *Fourth*, as these rules became clarified and understood, both policyholders and insurers were able to predict their likelihood of success and the litigation proceeded more swiftly and settled faster. Consequently, the government can expect that its litigation will proceed faster and settle more quickly and favorably past cases. The transaction costs will be much lower than comparable “private sector” environmental insurance coverage litigation.

Insurance Assets Are Still Available to Federal, State and Local Governments Even if They Were Sold to:



SUCCESS STORY

... These Brownfield funding strategies were recently successfully employed by the City and County of Denver. Denver successfully obtained money from the insurance companies of two waste generators whose waste was hauled to the Lowry Landfill, one of the nation's largest municipal landfills. Instead of forcing these companies into bankruptcy or merely treating their volumetric share as an orphan share to be assumed by the other polluting companies and the City, Denver settled with these two polluting companies and received an assignment of their causes of action against their general liability insurance carriers . . .

The Denver Colorado Insurance Recovery Example

- Step 1: USEPA settled with Denver and Waste Management requiring them to fund the remediation of the Lowry Landfill.
- Step 2: Denver and Waste Management sued all other Potentially Responsible Parties, recovering in settlement either money or an assignment of their cause of action against their historic insurance companies.
- Step 3: Denver sued the insurance companies and, within one year, settled for an amount exceeding Denver's expectations.

Phase I

*United States Environmental
Protection Agency*

versus

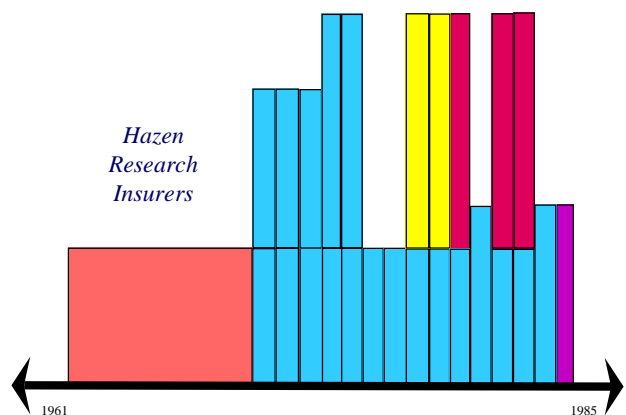
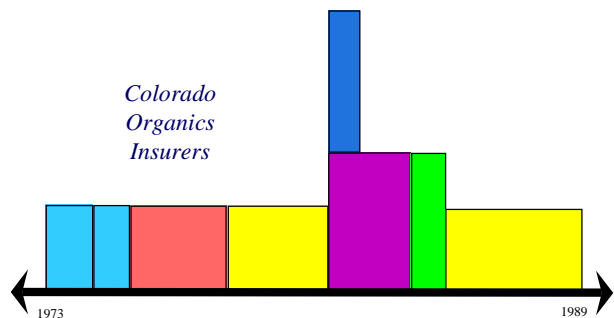
*City and County of Denver
Waste Management, Inc.*

versus

*Colorado Organics
Hazen Research*

Phase II:

Recovery from the historical insurance
companies of polluting companies



MORE SUCCESS STORIES

. . . It has long been common knowledge in the private sector that insurance is available to the private sector themselves to cover their own environmental liabilities . . .



Over the last twenty years, private industry has demanded and received billions of dollars from insurance companies to fund their enormous environmental liabilities. The list includes:

<i>AT&T</i>	<i>General Electric</i>
<i>Atlantic Richfield</i>	<i>Intel</i>
<i>Boeing</i>	<i>Kraft Foods, Inc.</i>
<i>Bristol-Meyer Squibb</i>	<i>Motorola</i>
<i>Caterpillar</i>	<i>Pfizer, Inc.</i>
<i>Chevron</i>	<i>Phillip Morris, Inc.</i>
<i>Chrysler</i>	<i>Sara Lee</i>
<i>Dow Chemical</i>	<i>Texaco</i>
<i>DuPont</i>	<i>Waste Management</i>
<i>Eastman Kodak</i>	<i>Westinghouse</i>
<i>Exxon Corporation</i>	<i>Whirlpool Corp.</i>
<i>Ford Motor Company</i>	

*How Much Did Private Industry Recover
To Clean Up Their Properties?*



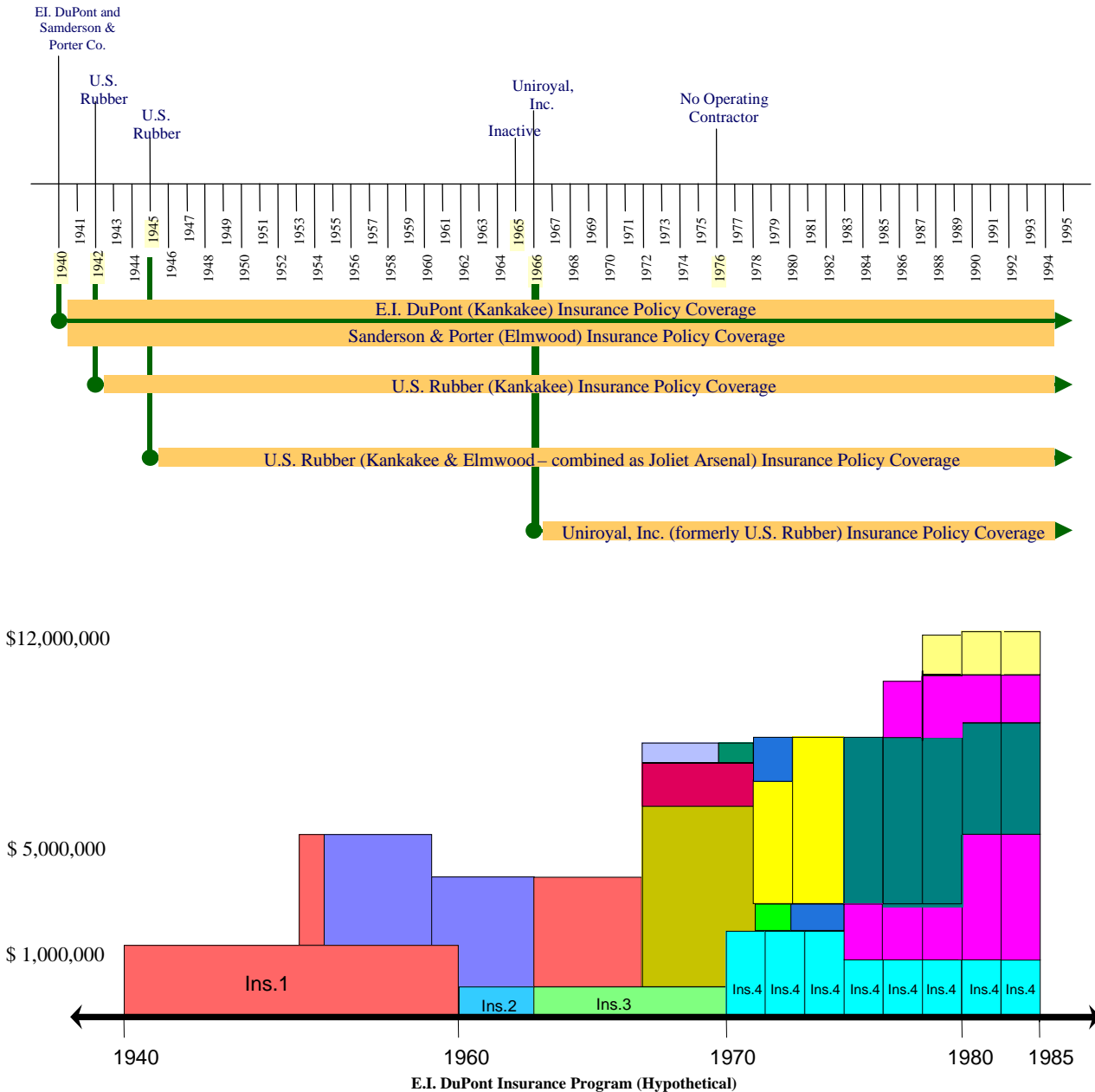
Remediation Funding

Owens Illinois.....	Over \$323 million dollars
Waste Management, Inc.....	Over \$250 million dollars
Texaco.....	Over \$ 75 million dollars
Rohm & Haas.....	Over \$ 72 million dollars
Sunoco.....	Over \$ 70 million dollars
Morton International.....	Over \$ 24 million dollars

Hypothetical Indiana Army Ammunition Plant, Indiana Insurance Recovery Strategy

Army Ammunition Plant

Site: Newport, Indiana
Type: Army Ammunition Plant



Qualifications of Zevnik Horton Guibord McGovern Palmer & Fognani

Insurance Coverage Advice, Litigation and Alternative Dispute Resolution

Zevnik•Horton represents policyholders in procuring insurance, in advising clients on the insurance aspects of transactions, in making claims under existing and historic policies of insurance and in resolving insurance coverage disputes through claims presentations, mediation, and where necessary, litigation. Recognizing that there is an insurance aspect to most transactions and that many claims and suits against businesses are covered by one or more forms of insurance, our lawyers have developed an interdisciplinary advisory and litigation practice focused on insurance and other indemnity contracts. Our firm's lawyers are best known for their comprehensive, or "global" insurance recovery efforts in the environmental, toxic tort and product liability areas. However, the firm also has developed expertise in more exotic forms of risk transfer, in the recovery of insurance assets in bankruptcy or reorganization proceedings, and in the use of insurance "captives" and other vehicles to structure long-term asset protection. Our insurance coverage lawyers seek to resolve insurance questions in the most expeditious and efficient manner reasonably calculated to meet our clients' objectives.

"Global" Environmental Insurance Recovery

Zevnik•Horton is best known for its design, implementation and management of comprehensive or "global" insurance recovery efforts for environmental liabilities. The firm's attorneys first conceived and successfully concluded cost recovery efforts brought by "Fortune 500" companies seeking to resolve in one forum coverage disputes over a company's environmental claims and losses, past, present and future. Recognizing that case-by-case or site-by-site environmental insurance recovery efforts result in large transaction costs and repetitive litigation or claims processing, with no concomitant increase in recoveries, the firm's attorneys have developed several methods of efficiently and effectively realizing upon historic insurance assets in meeting current environmental liabilities. The firm has undertaken such "global" environmental insurance recovery efforts for numerous "Fortune 500" companies, including several in the petroleum, mining and natural resources industries.

Insurance Coverage for Repetitive and Long Tail Toxic Tort and Product Liability Suits

Zevnik•Horton firm has advised clients on the procurement and recovery of insurance for multiple or repetitive claims of exposure to or injury from allegedly harmful products or substances, including asbestos, benzene, lead, silica, formaldehyde, latex gloves, wood preservatives, polybutylene, and tobacco. Coverage disputes over the payment of defense, judgment and settlement costs for "long tail" or latent diseases such as asbestosis and silicosis, immune disorders and various types of carcinoma have proliferated since 1977 when the first of the major asbestos coverage litigations were brought. The firm's insurance coverage lawyers have since expanded the range of their experience and expertise to encompass other products and risks and more diverse forms of coverage.